

pay. The number in the debtor's family, their ages and condition of health, will also be weighed in determining the ability to pay. However, when the debtor's income is from investments, business enterprises, or management efforts, age and health of both individual and family are of less importance.

(5) The value of the debtor's assets in relation to debts and liens of third parties is important in determining the debtor's ability to pay. It is recognized that debtors must retain a reasonable equity in essential nonsecurity property in order to continue normal operations and, in the case of an individual, to meet family living expenses over a period of years. Under this policy a reasonable equity in a modest nonsecurity homestead occupied by the debtor, whether or not exempt from levy and execution will not be considered as available for offer in settlement. Nonsecurity property which is in excess of minimum business and/or family living needs and which is not exempt from levy and execution should be considered when determining the debtor's ability to pay.

(c) *Debtor unable to pay in full.* Debts may be compromised or adjusted and security property retained by the debtor, provided:

(1) The debtor is unable to pay the indebtedness in full, and

(2) The debtor has offered an amount equal to the present fair market value of all security or facility financed, and

(3) The debtor has offered any additional amount which the debtor is able to pay, and

(4) The total amount offered represents a reasonable determination of the debtor's ability to pay.

(d) *Debtor able to pay in full but refuses to do so.* If the debtor has the ability to pay in full but refuses to do so, debts may be compromised or adjusted and security property retained by the debtor under certain conditions:

(1) The OGC advises that the Government is unable to enforce collection in full within a reasonable time by enforced collection proceedings, and the amount offered represents a reasonable settlement considering:

(i) Availability of assets or income which may be realized by enforced collection proceedings, considering the

applicable exemptions available to the debtor under State and Federal law, and

(ii) Inheritance prospects within 5 years, and

(iii) Likelihood of debtor obtaining nonexempt property or income within 5 years out of which there could be collected a substantially larger sum than the amount of the present offer, and

(iv) Uncertainty as to the price that the security or other property will bring at forced sale, or

(2) The OGC advises that there is a real doubt concerning the Government's ability to prove its case in court for the full amount of the debt, and the amount offered represents a reasonable settlement considering:

(i) The probability of prevailing on the legal issues involved, and

(ii) The probability of proving facts to establish full or partial recovery, with due regard to the availability of witnesses and other pertinent factors, and

(iii) The probable amount of court costs and attorney's fees which may be assessed against the Government if it is unsuccessful in litigation, or

(3) When the cost of collecting the debt does not justify enforced collection of the full amount. In such cases, the amount accepted in compromise or adjustment may reflect an appropriate discount for administrative and litigious costs of collection. Such discount will not exceed \$600 unless the OGC advises that in the particular case a larger discount is appropriate. The cost of collecting may be a substantial factor in settling small debts but normally will not carry great weight in settling large debts.

§§ 1956.125–1956.129 [Reserved]

§ 1956.130 Cancellation.

Nonjudgment debts, regardless of the amount, may be cancelled with or without application by the debtor.

(a) *With application by debtor.* Debts may be cancelled upon application of the debtor(s), or if the debtor is an individual and unable to act, upon application of the guardian, executor, or administrator of the debtor's estate. The following conditions apply:

(1) The servicing official furnishes a favorable recommendation concerning the cancellation, and

(2) There is no known security for the debt and the debtor has no other assets from which the debt could be collected, and

(3) The debtor is unable to pay any part of the debt and has no reasonable prospect of being able to do so, and

(4) The debt or any extension thereof is due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application.

(b) *Without application by debtor.* Debts may be cancelled upon a favorable recommendation of the servicing official in the following instances:

(1) *Debtors discharged in bankruptcy.* If there is no security for the debt, debts discharged in bankruptcy shall be cancelled by the use of Form FmHA or its successor agency under Public Law 103–354 1956–1 with a copy of the Bankruptcy Court’s Discharge Order attached. No attempt will be made to obtain the debtor’s signature and County Committee review is unnecessary. If the debtor has executed a new promise to pay prior to discharge and has otherwise accomplished a valid reaffirmation of the debt in accordance with advice from OGC, the debt is not discharged.

(2) *Impossible or impractical to obtain a debtor’s signature.* Debts may be cancelled if it is impossible or impractical to obtain a signed application and the requirements of §1956.130(a) (1), (2), and (3) *only* of this subpart are met. Form FmHA or its successor agency under Public Law 103–354 1956–1 will document:

(i) The sources of information obtained.

(ii) That a current effort was made to obtain the debtor’s application and the date of such effort.

(iii) The specific reasons why it was impossible or impracticable to obtain the signature of the debtor and, if the debtor refused to sign, the reason(s) given.

(3) *Deceased debtors (individuals only).* The following conditions must exist:

(i) There is no known security,

(ii) An administrator or executor has not been appointed to settle the debt-

or’s estate but the financial condition of the estate has been investigated and it has been established that there is no reasonable prospect of recovery, *or*

(iii) An administrator or executor has been appointed to settle the estate of the debtor, and

(A) A final settlement has been made and confirmed by the probate court and the Government’s claim was recognized properly and the Government has received all funds it was entitled to, or

(B) A final settlement has not been made and confirmed by the probate court, but there are no assets in the estate from which there is any reasonable prospect of recovery, or

(C) Regardless of whether a final settlement has been made, there were assets in the estate from which recovery might have been effected but such assets have been disposed of or lost in a manner which the OGC advises will preclude any reasonable prospect of recovery by the Government.

(4) *Disappeared debtor (individuals only).* The following conditions must exist:

(i) The debtor has disappeared and cannot be found without undue expense. Reasonable efforts either in person or in writing will be made to locate the debtor. These efforts, including the names and dates of contacts, and the information furnished by each person, will be fully documented on Form FmHA or its successor agency under Public Law 103–354 1956–1,

(ii) There is no known security for the debt and the debtor has no other assets from which the debt could be collected, and

(iii) The debtor is unable to pay any part of the debt and has no reasonable prospect of being able to do so.

§§ 1956.131–1956.135 [Reserved]

§ 1956.136 Chargeoff.

(a) *Judgment debts.* Subject to the provisions of §1956.112(d) of this subpart, judgment debts, regardless of the amount, may be charged off without the debtor’s signature upon a favorable recommendation of the servicing official provided:

(1) The United States Attorney’s file is closed, and